THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.23126 OF 2005

DATED:28.10.2005

Between:

S.Ramesh

…Petitioner

And

The Municipal Corporation of Hyderabad

Represented by its Commissioner, Lower Tank Bund

Hyderabad and another

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.23126 OF 2005

ORDER:

The petitioner is a tenant in the shop bearing No.1-11-90, situated at Shamlal Building, Begumpet, Hyderabad. The respondent sent a communication on 14.6.2005 informing him that the premises is getting affected to a depth of 30 feet and 5 feet for widening the road from Hyderabad Public School to Y.M.C.A. to 150 feet road and asked for consent to handover advance possession. It is also brought to the notice of this Court that the Municipal Corporation of Hyderabad (MCH) has already issued notice to the owner of the property, who has given consent to handover advance possession of the premises. The petitioner has not given consent and he states that any action on the part of MCH without due process of law under the Land Acquisition Act, 1894 would be illegal.

Municipal Corporation of Hyderabad (MCH) sought consent of the petitioner tenant for advance possession in larger public interest. It does not, however, mean that in the event of tenant of the property not willing to give consent the respondent MCH would resort to high-handed action. In such case, the MCH has to necessarily resort to provisions of Section 147 of the Hyderabad Municipal Corporation Act, 1955 (for short, the Act). I n **Srichand Rohra v. Commissioner, Municipal Corporation of Hyderabad** while dealing with similar matter, this Court made the following observations.

> A reading of the said letter does not in any way indicate that there is any truth in the submission made by the learned Counsel for the petitioners. What was sought to by issuing such letter is, a request was made to the landlords to give consent to handover advanced possession in the larger public interest. It was clearly informed that MCH will pay compensation to the effected structures as per the Rules and extent all benefits as per the Rules. If landlord desires to avail the benefits to be extended by the MCH on his own volition the landlord may give consent. If the landlord is not willing the letter nowhere compels one to part with the land for widening the road in which event as rightly contended by the learned Standing Counsel the MCH will have to resort to the provisions of the Land Acquisition Act.
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> In similar circumstances, W.P.No.21341 of 2000 dated 7.11.2000 and W.P.No.22216 of 2000 dated 16.11.2000 were disposed of by me with direction to respondent –Corporation to take necessary action as per the Land Acquisition Act or the HMC Act, if the landlords are not willing to give their consent. I also directed that if the consent is already given by the landlord/owner, the MCH shall be at liberty to proceed with further action for widening the road. In view of the judgment of the Full Bench in M/s.Ushodaya Publications v. Commissioner, Municipal Corporation of Hyderabad the MCH has to obtain consent even from the tenants without which the road widening work cannot be taken up unless MCH takes action for acquisition of land as per law. Needless to mention that unless proper procedure is contemplated and initiated, the MCH, in law, is not entitled to either forcibly take possession or demolish the structures in the area.

Learned Standing Counsel for MCH submits that if the petitioner tenant is not agreed under private negotiations, land acquisition proposals will be taken up as per the Land Acquisition Act, 1894 (LA Act). Therefore, the Writ Petition is misconceived. If the petitioner is not given his consent, it is always open to MCH to initiate action under Section 147 of the Act and acquire the property in possession of the petitioner. In this case, the petitioner has allegedly not given his willingness/consent to cooperate with the MCH for the road widening project. Needless to mention that Corporation has to initiate action under the provisions of LA Act. Till then, the petitioner cannot be deprived of his right to enjoy the property, nor the MCH can demolish the structures for the purpose of road widening.

The Writ Petition with the above observations is accordingly disposed of. No costs.

(V.V.S.RAO, J)

28.10.2005

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